

MEMO ENDORSED

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March 25, 2011

Via Facsimile: (212) 805-7930

Honorable James C. Francis
 United States Magistrate Judge
 United States Courthouse
 500 Pearl Street
 New York, New York 10007-1312

USDS SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #:
 DATE FILED: 3/29/11

Re: Gary Friedrich Enterprises LLC, et al. v. Marvel Enterprises Inc., et al.
08-CV-1533 (BSJ)(JCF); REQUEST FOR CONFERENCE CALL ON 3/28
OR 3/29

Dear Judge Francis:

As you are aware, I and this firm serve as co-counsel for the plaintiff's in this action, Gary Friedrich and Gary Friedrich Enterprises, LLC. This letter is sent to request guidance with respect to scheduling issues that have arisen as a result of the leave to file the amended Complaint in this action (granted by the Court earlier this week).

As you are aware, this Court granted Plaintiffs leave to amend and file their First Amended Complaint on March 22, 2011. As a result, the newly added Defendants will be served and added to the litigation. It is Plaintiffs' hope to accomplish this as quickly as possible, but this has obviously not yet occurred. Against this backdrop, is the fact that under the current scheduling order all depositions have to be completed by May 15th, and the parties have scheduled or are in the process of scheduling depositions of both parties and nonparties throughout the month of April and early May. As the Court is aware from prior communications, the depositions of two non-parties is set for next Thursday and the deposition of Plaintiff Friedrich is set for Friday. There are also other depositions set in April in Carolina and Los Angeles, with efforts underway to schedule depositions in England and elsewhere in the United States. The urgency of this letter is the realization that completing these depositions before the newly added defendants have been served and are in the case, will deprive them of the ability to be present and question witnesses, and could lead to requests to redepose witnesses at significant cost and expense to all parties and with an unfair tactical advantage to the similarly

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aligned defendants. Although as Plaintiffs we obviously want this already long-pending case to move as quickly as possible to conclusion, we also do not want to subject our clients, opposing parties or the court to undue expense, delay, and repetitious discovery. It thus unfortunately appears appropriate to extend the scheduling order and delay the depositions until all parties are before the Court.

Plaintiff's Counsel has spoken with Counsel for the Defendants with respect to the continuance of the scheduled depositions, and they believe the depositions should go forward. Defense counsel notes that the interests of the new parties will be aligned with those of the current Defendants and it is "unlikely" that they will want to, or need to, ask any questions that are not asked by current Defense counsel. We actually agree that this is likely the case absent some pure strategic effort to re-depose from the defense side, but obviously no one can guarantee what un-joined parties will do, and the law seems clear that they should have the right to be present if they so desire.

Therefore, Plaintiffs seek a conference call as soon as possible to discuss the impact of the new defendants being added on the scheduling order generally, and most urgently to discuss whether the depositions set for this coming week and the weeks to follow should go forward as planned or should await the joinder of the new parties. If at all possible, we would ask for an opportunity to discuss this matter on Monday or Tuesday so that the issue, as it regards the depositions scheduled for later in the week, can be timely discussed. It is Plaintiff's hope to eliminate the inconvenience to non-parties and parties alike of repeated depositions, which would also create difficulty with respect to future scheduling orders.

We are available for a conference call at the Court's convenience to discuss this matter.

Very truly yours,

Charles Kramer

cc via email: all counsel of record

CSK/slg

3/29/11

As discussed in today's conference, the depositions shall proceed as scheduled. Proceedings against all new defendants except The Walt Disney Company are stayed, and the time for those defendants to answer or move with respect to the complaint is extended until thirty (30) days after completion of the liability phase relating to the current defendants.

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SO ORDERED.
 James C. Francis IV
 USMJ